

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





76-1295

**United States Court of Appeals**

FOR THE SECOND CIRCUIT

Docket No. 76-1295

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

—against—

ANGELO MAMONE,

*Defendant-Appellant.*

ON APPEAL FROM AN ORDER OF THE UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

**APPENDIX OF DEFENDANT-APPELLANT  
ANGELO MAMONE**

ROBERT L. ELLIS

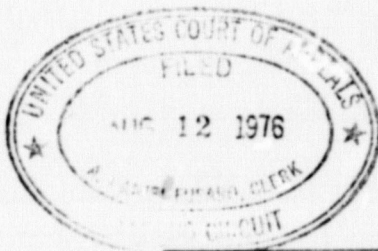
*Attorney for Defendant-*

*Appellant Angelo Mamone*

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### **Docket Entries**

DATE	PROCEEDINGS
6- 7-76	Filed copy of notice of appeal
6- 8-76	Filed copies of docket entries
6-18-76	Filed Scheduling Order #1
7- 1-76	Received docket fee
7- 1-76	Filed record (original papers of district court)
7-22-76	Filed application for an extension of time to file appellant's brief and appendix with proof of service
7-27-76	Filed Scheduling Order #2
7-28-76	Filed supplemental record (original papers of district court)

**Notice of Motion for New Trial**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

UNITED STATES OF AMERICA

-against-

CARMINE TRAMUNTI, et al.,

Defendants.

- - - - -x

NOTICE OF MOTION

73 Cr. 1099

KEVIN T. DUFFY, J.

S I R S :

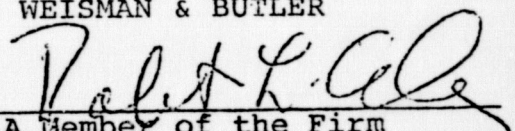
PLEASE TAKE NOTICE, that upon the annexed affidavit of Robert L. Ellis, sworn to October 30, 1974, and all prior proceedings had herein, the undersigned will move this Court before the Hon. Kevin T. Duffy, in Courtroom 905, on November 12, 1974, at 2:15 P.M., or as soon thereafter as counsel can be heard, for an order pursuant to Rule 33, Federal Rules of Criminal Procedure, directing that a new trial be had herein and for such other and further relief as the Court deems appropriate.

October 31, 1974.

Yours, etc.,

AMEN, WEISMAN & BUTLER

By

  
A Member of the Firm  
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TO: HON. PAUL J. CURRAN  
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*Notice of Motion for New Trial*

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*Notice of Motion for New Trial*

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**Affidavit of Robert L. Ellis  
in Support of Motion**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA

-against-

CARMINE TRAMUNTI, et al.,

Defendants.

-----x

AFFIDAVIT IN SUPPORT OF  
MOTION PURSUANT TO RULE  
33, FEDERAL RULES OF  
CRIMINAL PROCEDURE

73 Cr. 1099

KEVIN T. DUFFY, J.

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS.:

ROBERT L. ELLIS, being duly sworn, deposes and says:

1. I am a member of the firm of Amen, Weisman & Butler, attorneys for defendant Angelo Mamone ("Mamone"). I submit this affidavit in support of Mamone's motion for a new trial pursuant to Rule 33, Federal Rules of Criminal Procedure, on the ground that Joseph Marchese, one of the defendants herein, was in fact a government informant. On March 4, 1974, during the course of the instant trial, Marchese was granted judgment of acquittal.

THE BACKGROUND

2. It is clear beyond doubt that Marchese had been a government informant for years before the instant case and that in March, 1974, the very month in which he was released and scant



*Affidavit of Robert L. Ellis in Support of Motion*

days after the verdict in the case at bar, he appeared in California to testify as a government witness in the retrial of the case of United States v. Willie Lee Knight (Index No. 10068-R-CD) in the United States District Court for the Central District of California.

3. Mr. Knight was indicted in 1972 in the United States District Court for the Central District of California for violation of the federal narcotics laws. Specifically, it was charged that in September, 1971, Mr. Knight received a quantity of narcotics from Marchese. Marchese was actually an undercover agent working under the supervision of, among others, Detectives Michael Spataro, George Reilly and Peter Pallatroni of the New York Joint Federal-State Joint Task Force. It will be recalled that Group Leader Pallatroni and Detective Reilly were important participants in the arrest of Joseph DiNapoli and Vincent Papa and the seizure of the million dollars which they were carrying on February 3, 1972. Of course, it was Pallatroni and Reilly who provided the critical testimony upon defendant DiNapoli's motion to suppress in the case at bar.

4. The 1972 conviction of Mr. Knight was reversed by the United States Court of Appeals for the Ninth Circuit and remanded for a new trial. The retrial was scheduled to begin in December, 1973. Because Marchese was on trial in the case at bar and was not available to testify in California, a mistrial was declared. Indeed, there were repeated unsuccessful efforts by the United States Attorney in California to procure his

*Affidavit of Robert L. Ellis in Support of Motion*

attendance in California during January and February, 1974. Following the mistrial the matter was again tried before Judge Real, sitting without a jury, in the Central District of California. On or about March 19, 1974, Mr. Marchese appeared therein to testify on behalf of the government.

MARCHESE IS A GOVERN-  
MENT INFORMANT

5. Marchese was and is listed upon the records of the New York Office of the Drug Enforcement Administration under Informant Number SCI-1-0027. Annexed hereto as Exhibit "A" is a copy of a seven page statement in the handwriting of Informant SCI-1-0027 which was part of the "3500" material in the Knight case. This statement shows also the close proximity between agent Pallatroni and Marchese. Annexed hereto as Exhibit "B" is a copy of a stipulation entered into in the Knight case on March 21, 1974, Paragraph 3 of which demonstrates that SCI-1-0027 and Joseph Marchese are one and the same.

6. Our investigation has established that Marchese is credited upon the records of the Drug Enforcement Administration with providing important information relating to several recent cases including, among others, the prosecution of Frank Facina whose activities were claimed by the government to provide key elements of the probable cause for the arrest of DiNapoli and Papa and the seizure of the million dollars, George Rossi, Raymond Perez, Bernard Sierra, of course Willie Lee Knight and, most significantly of all, the arrest of Papa and DiNapoli on



*Affidavit of Robert L. Ellis in Support of Motion*

February 3, 1972. Moreover, contemporaneous press reports at the time of the arrest of the defendants herein quote Deputy Police Commissioner William McCarthy, speaking at a joint news conference with Mr. Curran, as stating investigation of this case "was code-named operation 'Shamrock'". It is not without significance that the private cab company operated by Marchese at the time was called "Shamrock Cabs".

7. According to testimony given in the Knight case on January 28, 1974, at the height of the instant trial, by Michael Spataro, a detective assigned to the New York Joint Federal-State Task Force, Marchese was not paid for his cooperation. He was informed, however, that his cooperation would be made known to the Court in other cases pending against him. Detective Spataro further testified in January, 1974, that those outstanding cases were still pending against Marchese. Thus, the basis for Marchese's cooperation continued to exist during the instant trial. Annexed as Exhibit "C" hereto are excerpts from the United States v. Knight trial transcript, specifically the January 28, 1974, testimony of Detective Spataro which shows that the charges which induced Marchese's initial cooperation were extant during the instant trial.

8. On September 16, 1974, Ivan Fisher, Esq., attorney for defendant Christiano and I interviewed Victor Sherman, Esq., the attorney for Willie Lee Knight, in his office at 8383 Wilshire Boulevard, Beverly Hills, California. Mr. Sherman advised us that on March 19, 1974, he interviewed Joseph Marchese who was known to him as a government informant and a prospective

*Affidavit of Robert L. Ellis in Support of Motion*

government witness. Marchese advised Sherman, among other things, that he had been a government informant for the past three years.

A HEARING IS REQUIRED  
TO DETERMINE WHETHER  
MARCHESE WAS A GOVERN-  
MENT SPY

9. Mr. Marchese either personally or through his attorney, John Curley, Esq., participated with other counsel in numerous strategy meetings throughout the trial. At the very outset, during the jury selection proceedings, basic defense strategy was repeatedly discussed. Similarly, conversations relating to the cross-examination of government witnesses, affirmative defenses and the like were continually going on in the presence of Mr. Marchese or Mr. Curley. I am advised that Marchese often engaged other defendants, including my client, Angelo Ramone, in conversations about their defense.

10. Admittedly, we have no knowledge that Marchese actually transmitted defense information to the government. Necessarily, such would be known only to the government. But, it is respectfully submitted, the strong evidence that Marchese was a government informant before, during and after the instant trial requires that a hearing be held to determine the extent, if any, that he may have intruded upon the attorney-client relationship of the defendants on trial by continuing to act as a government informant with respect to this case.




*Affidavit of Robert L. Ellis in Support of Motion*THE PROCEDURE

11. As noted in our memorandum of law submitted herewith, Rule 33 provides that a motion for a new trial based on newly discovered evidence may only be granted upon remand of the case where, as here, an appeal is pending. Simultaneously with the making of this motion we are moving in the Court of Appeals for an order directing that the matter be remanded to this Court for a hearing upon the instant motion. However, several cases have indicated that the Court of Appeals will only remand if the District Court indicates its willingness to entertain the motion.

WHEREFORE, it is respectfully requested that a hearing be held to determine whether defendant Mamone's rights under the Fifth and Sixth Amendments of the constitution may have been violated by the government's use of Joseph Marchese as an informant during the trial. In the alternative, the government should be required to produce, for in camera inspection any and all files containing information received from Joseph Marchese relating to this case or any defendant therein.

  
ROBERT L. ELLIS

Sworn to before me this  
20<sup>th</sup> day of October, 1974.

  
Notary Public

DOROTHY LEEBERT  
Notary Public, State of New York  
No. 31-0003800  
Qualified in New York County  
Commission Expires March 30, 1975

EXHIBIT "A" ANNEXED TO AFFIDAVIT OF  
ROBERT I. ELLIS

[HANDWRITTEN STATEMENT OF JOSEPH MARCHESE]

<sup>10</sup>  
Taken October 1, 1971

Statement of SGT-0027 at New York Task Force Office by Det. Spataro, Sgt. Costanzo, and Agent Sturm on October 1, 1971, at 3:00 PM, relative to his participation in the initiation of CT-71-0154.

On Sunday night, Sept. 26, 1971, at about 11:00 PM, I received a telephone call from Frank Fachiano. Frank told me that the "pork eater" was expected in New York City on Monday night, Sept. 27, 1971. I notified Det. Spataro, by telephone, of the above telephone conversation between Frank Fachiano and myself.

On Monday night, Sept. 27, 1971, at about 10:30 PM, I received a telephone call from Frank Fachiano, asking if I had heard from Willie Knight. I replied in the negative, however, a few moments later I received a telephone call from Willie Knight. Willie Knight told me that he was staying at the Taft Hotel in Manhattan, N.Y., and wanted to speak to Frank Fachiano. I told Willie I would call him back to make arrangements. I immediately notified Det. Spataro of the above telephone conversation. I then left my residence and went to a public telephone on Bleecker Ave and called

BEST COPY AVAILABLE



## Exhibit "A" Annexed to Affidavit of Robert L. Ellis

Frank Fashiano, at 305-866-9115; to notify Frank that I had heard from Willie Knight.

Frank told me that it was too late to do anything this evening but I should make arrangements to speak to Willie Knight on Tuesday, Sept. 28, 1971. I immediately notified Det Spataro by telephone, of the above conversation.

Det. Spataro outlined a plan for me to meet him at 57th Street and 7th Ave., at 7:00 PM, on Sept. 28, 1971. After I saw Det Spataro, I was to wait ten minutes and then to proceed to the Taft Hotel, room 1040, to meet Willie Knight. I was to bring Willie into the lobby, of the Taft Hotel, to a row of telephones where officers of the Task Force would be able to observe Willie Knight and obtain his description.

On Tuesday, Sept. 28, 1971, the above plan was carried out, as scheduled, and Willie Knight did have a telephone conversation with Frank Fashiano, from the lobby of the Taft Hotel. When Willie Knight exited the telephone booth, he told me that he was waiting to receive a call, from another "supplier", for better goods.

## Exhibit "A" Annexed to Affidavit of Robert L. Ellis

Willie Knight instructed me to wait at my residence for a telephone call, from him, as to whether we could do business.

On Wednesday, Sept. 29, 1971, I received a call, at my residence, from Willie Knight. Willie Knight stated that he was ready to do business, however, he only had \$6900.00, instead of \$7600.00. I immediately notified Det. Spataro and Sgt. Costanzo, by telephone, of the above conversation.

At about 6:00 PM, on Sept. 29, 1971, I met with Sgt. Costanzo and Det. Spataro and, after a brief conference, was instructed to call Frank Fackiano, in Florida, to make arrangements to have Willie Knight supplied with heroin. Frank Fackiano told me I would receive instructions, at home, as to how this would be accomplished.

Upon my arrival at home, that same evening, I received instructions that I would be contacted on Thursday, Sept. 30, 1971, between 7:00 and 8:00 PM.

On Thursday, Sept. 30, 1971, at about 4:00 PM, I left my residence to buy a pack of cigarettes at the corner candy store. Upon my return, about fifteen



## Exhibit "A" Annexed to Affidavit of Robert L. Ellis

feet from my house, I heard a voice from the rear and to the left, instructing me not to turn around but to walk directly to my car, to unlock the car door, and to keep walking and not to turn around. The unknown male also stated that he had a package for me from my "cousin", I complied with the above orders. Upon reaching the corner of East 196 and Valentine Avenue, I was instructed by the unknown male that the package was now in my car and to do what I had to do with the package. The unknown male told me to go to my car, but not to turn around to look at him.

I went directly to my car and found a brown paper bag on the back seat. I got in my car and drove to East 171 Street and Jerome Avenue, to a telephone and notified Det. Spataro.

At 5:15 PM, on Sept. 30, 1971, I met with Sgt. Costanzo and Det. Spataro at the above location. Det. Spataro placed the brown paper bag in his briefcase and I was taken to the Task Force Office by Det. Spataro and Sgt. Costanzo.

*M.H.*

## Exhibit "A" Annexed to Affidavit of Robert L. Ellis

At the task force office, after a conference with Sgt. Costanzo and S/A Pallatone, I was searched by Det. Spator who found a ten dollar bill and assorted coins.

I left the office in an undercover taxi, driven by an officer named "Terry". At East 110 Street and 5th Avenue, Terry handed me a brown paper bag and instructed me to give it to Willie Knight in exchange for the money.

At 9:30 PM, on Sept. 30, 1971, at the intersection of Madison Avenue and East 109th Street, while waiting for a red signal light to change, Willie Knight entered the taxi. I handed the package to Willie and he gave me the money. The taxi proceeded west on East 109 S. During the exchange of the package and the money, the officer named Terry, who was driving taxi, turned around, opened the partition, and asked, "Where do you want to go now Mack?" witnessing the exchange. Willie then replied, "Drop me off at the corner (E 109th Street and 5th Ave.) my brother is waiting for me, with a car, to take me to the track."

After dropping Willie off, at E 109th  
11/4 #15



## Exhibit "A" Annexed to Affidavit of Robert L. Ellis

St and 5th Ave, we proceeded to E119 and Madison Avenue where Det Spataro searched me, in the presence of Terry, after I gave him the money that I had received from Willie Knight, Det. Spataro again found the ten dollar bill and some change. I entered Det Spataro's car where he and S/A Sturm took me to the parking lot of the Bronx Terminal Market, where we met S/A Pallatone.

Det Spataro, S/A Sturm, and S/A Pallatone counted the money and I heard them say there was \$6900.00. Det. Spataro again searched me and found a ten dollar bill and some change. \* Insert

We proceeded to my car on E. 171 St and Jerome Ave. I entered my car and proceeded to Middleton Road and Edison Street, where I parked my car and entered Frank Fashiano's residence. I put the money on the Kitchen table and stated to Frank's wife, Flo, "This is for Frank". I then proceeded to my car and then to the Service Road at the Hutchinson River Parkway, at Westchester Avenue, where Det Spataro searched me, in the presence of S/A Sturm and found the ten dollar bill and some change. I then returned to my

Det. Spataro returned the money to me and told me to count it, I also found the sum to be \$6900.00

\*  
11/14/46

11/14/46

## Exhibit "A" Annexed to Affidavit of Robert L. Ellis

to my residence.

At 11:30 PM, on Sept. 30, 1971, I received a call from Frank Fashione, who queried as to how the deal went down. I replied "Fine, no problems". I also informed him that I had left the package of money (\$6900.00) with his wife, Fli.

Willie Knight is a negro male, about 5'5" to 5'7" tall, 150 pounds. He has black hair and appears to be about 45 years old. He was wearing a brown suit.

I have read this statement, consisting of seven pages, initialed my corrections and the first six pages, and signed the last page. This statement is true and correct, to the best of my knowledge. No threats, force, or promises of rewards have been made to me and this statement is freely and voluntarily given.

Witnessed by  
Det. Michael Spataro

Witnessed by  
S/A Don Starn



EXHIBIT "B" ANNEXED TO AFFIDAVIT OF  
ROBERT L. ELLIS  
[STIPULATION ENTERED INTO IN U. S. V. KNIGHT]

1 WILLIAM D. KELLER  
United States Attorney  
2 ERIC A. NOBLES  
Assistant U. S. Attorney  
3 Chief, Criminal Division  
ROBERT M. NEWELL, JR.  
4 Assistant U. S. Attorney  
1300 U. S. Courthouse  
5 312 N. Spring Street  
Los Angeles, CA 90012  
6 Telephone: 688-2579

7 Attorneys for Plaintiff  
United States of America

FILED

MAR 21 1974

CLERK, U. S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DEPUTY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, )	NO. 10068-R-CD
11 Plaintiff, )	
12 v. )	<u>STIPULATION REGARDING TRIAL PROCEDURE,</u>
13 WILLIE LEE KNIGHT, )	<u>CONSIDERATION OF WITNESSES' WRITTEN</u>
14 Defendant. )	<u>STATEMENTS AND ADDITIONAL FACTS</u>
15	

16 IT IS HEREBY STIPULATED by and between Plaintiff, United  
17 States of America, through its counsel of record, and the Defendant,  
18 WILLIE LEE KNIGHT, personally, and by his counsel of record, as  
19 follows:

20 1. That this matter presently set for trial on March 21,  
21 1974, before the Honorable Manuel Real will proceed as a court  
22 trial without jury wherein all parties do hereby knowingly and  
23 understandingly waive and give up any and all rights to a jury  
24 trial.

25 2. That the Court may receive and consider as evidence in  
26 this trial all testimony, affidavits and exhibits previously  
27 received in evidence at two previous pretrial hearings held before  
28 this Honorable Court on April 18, 1972, and on January 28, 1974,  
29 respectively.

30 /  
31 /

32 RLB:mc

*Exhibit "C" Annexed to Affidavit of Robert L. Ellis*

1           3. That the Court may receive, read and consider as  
2 evidence in this trial photocopies of a six-page statement hand-  
3 written by Rita McCorkle and a seven-page statement handwritten by  
4 SCI 1-0027, also known as Joseph Marchese, both given on October 1,  
5 1971. Further, that the person referred to in these statements as  
6 "Willy", "Willy Knight" and "Willy Lee Knight" are one and the same  
7 as the defendant in this case.

8           4. That the contents of the box now marked as plaintiff's  
9 exhibit one for identification consists of three plastic containers  
10 of white powder (which are deemed marked as plaintiff's exhibits 1A,  
11 1B and 1C for identification) which have been analyzed as containing  
12 heroin by Forensic Chemist Lionel Tucker. Further, that the Court  
13 may read and consider as evidence of the chemical analysis two pages  
14 of reports prepared by Mr. Tucker (the first report regards the  
15 original analysis and the second report regards a second analysis of  
16 the same exhibits with a more complete breakdown as to percentage of  
17 pure heroin); that the term "1A" referred to in Mr. Tucker's report  
18 dated April 14, 1972, encompasses plaintiff's exhibits 1A and 1B,  
19 and that "1B" referred to in the same report refers to plaintiff's  
20 exhibit 1C; and that the figures in box 29 of the reports labelled  
21 "TOTAL NET" refer to quantities of 100% pure heroin.

22           5. That a proper chain of custody of plaintiff's exhibit one  
23 (and its contents 1A, 1B and 1C) has been maintained since it was  
24 seized from Rita McCorkle on October 1, 1974 by Agent Frank Eaton;  
25 that Agent Eaton is deemed to have presently identified under oath  
26 exhibit one and its contents as being items seized from Rita  
27 McCorkle on that date; that Detective Michael Spataro is deemed to  
28 have presently identified under oath 1A and 1B as appearing to  
29 contain the identical powder which he observed in the  
30 vehicle on September 30, 1971 in New York City.  
31 ported to a nearby Drug Enforcement Task Force  
32



*Exhibit "B" Annexed to Affidavit of Robert L. Ellis*

1 be field tested, placed in substitute containers which appear to be  
2 identical to exhibits 1A and 1B and ultimately redelivered to Joseph  
3 Marchese for him in turn to deliver to defendant Willy Lee Knight on  
4 September 30, 1971, in the presence of Detective Gerald Zappolo of  
5 the New York State Police; that Rita McCorkle is deemed to have  
6 identified under oath exhibit one as being the wrapped package with  
7 contents unobserved by her which Knight gave her shortly before  
8 leaving for Kennedy International Airport and which remained  
9 unopened in her custody until her arrest in Los Angeles on October 1,  
10 1971; further, that Rita McCorkle be deemed to have testified under  
11 oath that an exhibit now deemed marked as plaintiff's exhibit two  
12 for identification appears to be the brown paper wrapping with  
13 writing which was wrapped around the package (exhibit one) that  
14 Knight had asked her to carry, that she transported no contraband  
15 independent of that which had been given to her by defendant Knight,  
16 and that upon her arrival in Los Angeles, she made no attempt to  
17 resist or evade arrest; further, that Agent Frank Eaton be deemed to  
18 have testified under oath that after seizing plaintiff's exhibit one  
19 from McCorkle, he removed exhibit two for fingerprint analysis and  
20 sent the remainder of the package (exhibit one and contents (1A, 1B  
21 and 1C) to San Francisco for chemical analysis by Lionel Tucker.

22 6. That Mr. Sim Willis be deemed to have been called, sworn  
23 and duly qualified as an expert in the language, method of use, and  
24 packaging of heroin, and as having testified that he is a Special  
25 Agent of the Drug Enforcement Administration, having been so employed  
26 for nine years; that he has made in excess of fifty purchases of  
27 heroin while acting in an undercover capacity, and that in his  
28 expert opinion, based on the quantity and purity of heroin involved  
29 in each of the three packets 1A, 1B and 1C, each of the three  
30 containers of heroin was possessed with the intent to distribute;  
31 furthermore, the word "dope" is commonly used in illicit drugs and  
32

*Exhibit "B" Annexed to Affidavit of Robert L. Ellis*

1 narcotics traffic and generally means "contraband" or "narcotics";  
2 heroin is often referred to as "dope"; and contraband (including  
3 heroin) is often referred to as "goods".

4 7. That defendant Willie Lee Knight knowingly and under-  
5 standingly waives and gives up his right to confront and cross-  
6 examine at this trial any and all witnesses who testified in  
7 either of the two previous suppression hearings, the witnesses  
8 Joseph Marchese and Rita McCorkle whose statements are to be con-  
9 sidered as substantive evidence in this trial, and any and all  
10 persons otherwise referred to in this stipulation.

11 DATED: This 21st day of March, 1974.

12 WILLIAM D. KELLER  
13 United States Attorney

14 ERIC A. NOBLES  
15 Assistant U. S. Attorney  
16 Chief, Criminal Division

17 Robert M. Newell, Jr.  
18 ROBERT M. NEWELL, JR.  
19 Assistant U. S. Attorney

20 Attorneys for Plaintiff  
21 United States of America

22 VICTOR SHERMAN  
23 Attorney for Defendant

24 WILLIE LEE KNIGHT  
25 Defendant  
26  
27  
28  
29  
30  
31  
32



EXHIBIT "C" ANNEXED TO AFFIDAVIT OF  
ROBERT L. ELLIS

[EXCERPTS FROM TRIAL TRANSCRIPT IN U. S. v. KNIGHT]

Spataro - Cross

1

2 to the police station?

3 A Yes, sir.

4 Q And did you tell him then that he had your per-  
5 mission to go ahead and transfer the contraband to another  
6 person?

7 A Later that evening.

8 Q And you, in fact, gave him instructions that he  
9 could then take that contraband that he had received and that  
10 he had given to you and he could then transfer it to Mr.  
11 Knight?

12 A Yes.

13 Q Now, when you say that in your investigation you  
14 have been unable to determine who gave Mr. Marchese the  
15 contraband, you don't know if it was another police officer  
16 or not, do you?

17 A No, I don't.

18 Q I take it other agents other than yourself knew  
19 about Mr. Marchese?

20 A What do you mean by "knew about Mr. Marchese"?

21 Q Well, knew that he was an informant for the police  
22 department?

23 A Yes.

24 Q By the way, was he a paid informant?

25 A No.

*Exhibit "C" Annexed to Affidavit of Robert L. Ellis*

Spataro - Cross

1

2

Q He wasn't given any funds for his work?

3

A No.

4

Q How long had he been a government agent?

5

A I would say approximately two months.

6

Q And during that time, he had not received any

7

payment at all from the United States Government?

8

A No.

9

Q As far as money?

10

A No, sir.

11

Q Was he receiving payment in the way of any other

12

benefits?

13

A Not to my knowledge.

14

Q Well, did he have any cases pending at the time?

15

A Yes, he did.

16

Q Was he receiving payment by way of working off

17

those other cases?

18

A I don't know.

19

MR. NEWELL: Your Honor, I have to object to the

20

question as being ambiguous.

21

MR. SHERMAN: All right.

22

THE COURT: Objection sustained.

23

BY MR. SHERMAN:

24

Q Was he being given any consideration in his then

25

pending cases for being an informant for you?



*Exhibit "C" Annexed to Affidavit of Robert L. Ellis*  
Spataro - Cross

1  
2 A He was told that his cooperation would be made  
3 known to the court at the time when his case was settled.

4 Q As to those cases that were pending as of September  
5 30th, 1971, what happened to those cases?

6 A They are still pending.

7 Q They haven't been brought to trial?

8 A No, sir, not to my knowledge.

9 Q Is he still under indictment or under a charge  
10 in those other cases?

11 A Yes, sir.

12 MR. SHERMAN: I have no other questions.

13 REDIRECT EXAMINATION

14 BY MR. NEWELL:

15 Q Did you ever determine the source of that contraband  
16 Did you ever determine the source or from where the  
17 item that was found by you in the back seat of Mr. Marchese's  
18 car came from?

19 A No, sir.

20 Q Did you instruct anyone to put that there, any  
21 police agent or any person that you know of to put that there?

22 A No, sir.

23 Q To your knowledge, did any official police agency  
24 have anything to do with supplying that contraband; to your  
25 knowledge, or as far as you have heard?

Affidavit of Paul J. Curran  
in Opposition to Motion

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA :

- v - :

CARMINE TRAMONTI, et al., :

Defendants. :

AFFIDAVIT

73 Cr. 1099 (KTD)

- - - - - x

STATE OF NEW YORK )  
COUNTY OF NEW YORK : ss.:  
SOUTHERN DISTRICT OF NEW YORK)

PAUL J. CURRAN, being duly sworn, deposes and says:

1. I am the United States Attorney for the Southern District of New York and am familiar with the prior proceedings herein. I submit this affidavit in response to the motion dated October 31, 1974, by the defendant, ANGELO MANONE for a new trial on the grounds that the defendant Joseph Marchese was in fact a sham defendant and a Government spy in the ranks of the defendants and their attorneys during the course of the trial herein.

2. The cases in this Circuit establish that the fact that a man acts as an informant is simply no evidence that he is not simultaneously engaged in the commission of crimes. See, United States v. Huss, 482 F2d 38, 45 (2d Cir. 1973) ("Siegel, himself, had participated in the Huron and Columbia bombings, even while serving as a vital government informant"); United States v. Koss, Docket Nos.



*Affidavit of Paul J. Curran in Opposition to Motion*

74-1878-79, 74-1920, Slip Op. 413 at 428 (2d Cir., November 15, 1974); United States v. Corallo, 413 F.2d 1306, 1320-21 (2d Cir.), cert. denied, 396 U.S. 958 (1969); United States v. DeSapio, 435 F.2d 272, 282 (2d Cir. 1970), cert. denied, 402 U.S. 999 (1971); United States v. Super, 492 F.2d 319, 322 (2d Cir. 1974) ("Informants in drug cases are not Brahmins, nor are they noted for long-term occupancy of well-tended premises"). There is simply no logical relationship between Marchese's co-operation in other cases and his role as a defendant in this case.

3. I have discussed this matter with the Assistant United States Attorneys who participated with me in the prosecution of this case. None of us and no member of the United States Attorney's Office has any knowledge whatsoever that the defendant Joseph Marchese cooperated in any way or form with the Government in this case. During the course of the trial, the Government received no information either from Marchese or from any other source concerning any conversations between defendants and their attorneys or with respect to any defense tactics.

4. Marchese was a bona fide defendant in this case. The Government proceeded against Marchese exactly as it proceeded against the other defendants. It was the Government's hope from the time of the indictment that

*Affidavit of Paul J. Curran in Opposition to Motion*

Mr. Marchese would be convicted in this case. I argued as strenuously as I could in opposition to the defendant Marchese's motion for a directed judgment of acquittal both at the end of the Government's case and at the end of all the evidence. At those times, I took the position, which was an honest one, that, with complete respect for the Court's ultimate ruling, there was indeed sufficient evidence against Marchese to submit the case against him to the jury.

5. During the proceedings on November 1, 1974, an issue arose as to whether or not the Court had jurisdiction to entertain a motion for a new trial prior to remand of this case from the Court of Appeals. The settled rule is that, if the Court desires to entertain this motion while the case is on appeal, the Court has jurisdiction to hear the motion and to deny it; United States v. Smith, 433 F.2d 149, 152 (5th Cir. 1970); United States v. Clay, 476 F.2d 1211, 1215 (9th Cir. 1973); United States v. Frana, 454 F.2d 1136, 1138 (9th Cir.), cert. denied, 406 U.S. 925 (1972) and cases cited at 1138 n.3; but that if the Court is disposed to grant the motion, it must so inform the appellate court, which will customarily remand the case; United States v. Aguillar, 387 F.2d 625, 626 (2d Cir. 1967); United States v. Comulada, 340 F.2d 449, 452 (2d Cir.), cert. denied, 380 U.S. 978 (1965).



*Affidavit of Paul J. Curran in Opposition to Motion*

**WHEREFORE, it is respectfully submitted that the motion for a new trial should be denied without hearing.**

---

**PAUL J. CURRAN**  
**United States Attorney**

**Sworn to before me this**

**27th day of November, 1974.**

**Reply Affidavit of Robert L. Ellis  
in Support of Motion**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA

-against-

CARMINE TRAMUNTI, et al.  
(ANGELO MAMONE),

Defendants.

-----x

73 Cr. 1099

REPLY AFFIDAVIT

(KTD)

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) SS.:

ROBERT L. ELLIS, being duly sworn, deposes and says:

1. I am a member of the firm of Amen, Weisman & Butler, attorneys for defendant Angelo Mamone. I submit this affidavit in reply to the affidavit of Paul J. Curran, Esq., sworn to November 27, 1974, and in further support of Mamone's motion for a new trial dated October 31, 1974, on the ground that Mamone's Fifth and Sixth Amendment rights may have been violated by the surreptitious intrusion by defendant Joseph Marchese into privileged consultations between attorney and client and communications amongst defense counsel relating to their conduct of the trial.

2. Mr. Curran acknowledges that Marchese acted as a government informant in other cases but denies that he was a "sham defendant" or a "spy" here. Our evidence heretofore sub-



*Reply Affidavit of Robert L. Ellis in Support of Motion*

mitted establishes that Marchese was a government informant before and immediately after this trial. It is not denied by Mr. Curran that the records of the Drug Enforcement Administration set forth, among other things, that Marchese provided information leading to the arrest of Joseph DiNapoli and Vincent Papa and the seizure of the million dollars in the case at bar.

3. Mr. Curran asserts that he discussed this matter with his assistants and that none has knowledge that Marchese cooperated with the government in this case (Aff. ¶3). Significantly, however, Mr. Curran fails to state that he conducted a similar inquiry into Mr. Marchese's possible cooperation with the Drug Enforcement Administration. It will be recalled that our moving affidavit sets forth documentary evidence that Marchese acted as an informant for the agents assigned to this case. The exhibits annexed thereto and a subsequent interview of Marchese suggest that there was indeed a continuing relationship between Marchese and Drug Enforcement Administration personnel during the trial.

4. On November 6, 1974, I interviewed an obviously frightened and recalcitrant Marchese in my office. Although Marchese denied acting as an informant in this case, such denial is entitled to no weight for he also initially denied that he was an informant in the California case of Willie Lee Knight, or, for that matter, in any other case. That he was not entirely candid

*Reply Affidavit of Robert L. Ellis in Support of Motion*

in his denials is evident both from the exhibits attached to our moving affidavit of October 31, 1974, and Mr. Curran's affidavit of November 27, 1974. In any event, during the course of the interview Marchese said that he:

a) was questioned extensively before trial by the government about each of the defendants in this case;

b) was told by Assistant United States Attorney Walter Phillips that he would receive \$100,000 in cash, a home in any location he wanted to live and a new identity if he cooperated;

c) was directed by Phillips to contact agent Shutes of the Drug Enforcement Administration if he had anything to report to Phillips;

d) was periodically asked during the trial by Shutes how the defendants were treating him and whether any of them threatened him;

e) was regularly questioned by Shutes after he began bringing newspapers, magazines and lunch for some of the jailed defendants; and

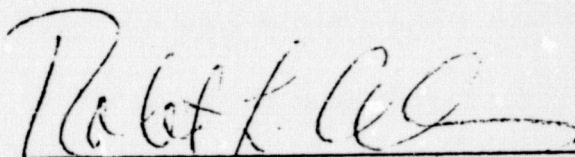
f) was forbidden in February, 1974, by Phillips to go to California to testify in response to a subpoena served in the Knight case.



*Reply Affidavit of Robert L. Ellis in Support of Motion*

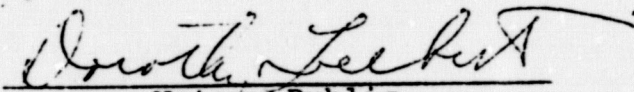
5. My attempts to discuss these matters with Mr. Phillips were to no avail. On November 8, 1974, I made an appointment to see Phillips in Philadelphia on November 15. However, Mr. Phillips cancelled the appointment and advised me that after speaking to Mr. Curran he had nothing to say in the matter. He denied that he knew anything about Mr. Marchese's activities on trial although on November 8, he made an appointment with me to discuss that very subject.

6. It is respectfully submitted that the foregoing, combined with the evidence in our affidavits of November 19, 1974, and October 31, 1974, requires an evidentiary hearing where the testimony of witnesses can be obtained under oath and the relevant records of the Drug Enforcement Administration subpoenaed. Only then can it be determined whether Mamone was convicted upon a fair trial, untainted by illegal intrusion by government undercover agents.



ROBERT L. ELLIS

Sworn to before me this  
30 day of January, 1975.



Notary Public

DOROTHY LEBERT  
Notary Public, State of New York  
No. 8122170  
Qualified in New York County  
Commission Expires March 30, 1978

## Transcript of Hearings—July 7-8, 1975

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----X  
4 UNITED STATES OF AMERICA :

5 vs. :

73 Cr. 1099

6 CARMINE TRAMUNTI, ANGELO MAMONE, :

7 ET AL, :

8 Defendants. :

9 -----X  
10 BEFORE: HON. KEVIN THOMAS DUFFY,

11 District Judge

12  
13 July 7, 1975

14 2:00 p. m.

15  
16 APPEARANCES:

17 PAUL J. CURRAN, ESQ.,  
United States Attorney  
For the Government

18 BY: Thomas E. Engel, Esq., and  
19 Thomas Fortuin, Esq.,  
Assistant United States Attorneys

20 AMEN WEISMAN & BUTLER, ESQS.,  
Attorneys for Defendant Mamone  
21 BY: Robert L. Ellis, Esq., and  
22 Michael G. Shannon, Esq., of Counsel.

23 HERBERT S. SIEGEL & GILBERT EPSTEIN, ESQS.,  
Attorneys for Defendant Tramunti  
24  
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2 (Case called.)

3 (In open court.)

4 THE COURT: I guess this is the government's  
5 request.

6 MR. ENGEL: Yes, your Honor. We have been  
7 served, both the United States Attorney's Office and the  
8 Drug Enforcement Administration, with subpoenas to pro-  
9 duce records which may be in our possession with respect  
10 to documents and notes, memoranda and so forth, relating  
11 to Joseph Marchesi and anything he may have said with  
12 respect to a number of defendants and co-conspirators  
13 listed in the Tramunti case and attached to the subpoena  
14 as schedule A.

15 The government moved to quash that subpoena  
16 on behalf of the Drug Enforcement Administration and on  
17 behalf of the United States Attorney's Office. And the  
18 way I would like to suggest to proceed is to treat the  
19 subpoena as a motion for a discovery under Rule 16.

20 Rule 17(c) does not allow anything that is  
21 discoverable under Rule 16 and Sec. 3500 eliminates the  
22 government's responsibility to disclose memoranda to that  
23 which is properly discoverable.

24 In any event, under Rule 16(b), if the subpoena  
25 is treated more or less as a motion, the defendant would

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2 have to show materiality and reasonable necessity for the  
3 the request, and there has been no such showing here.

4 Certainly, with respect to any and all memoranda  
5 containing information furnished directly or indirectly  
6 by Marchesi, that would have to be limited between the time  
7 of the indictment and his arrest in this case on October  
8 3, 1973 and March 13, 1974, and in addition, must relate  
9 to the purpose of the motion, which is to discover con-  
10 versations of the defendants or their lawyers about the  
11 defense of this case.

12 If the subpoena is construed as a request under  
13 Rule 16 and is limited, as I have suggested, then the  
14 government's response to that is that there is no such  
15 memoranda and no such notes, documents, records or anything  
16 else which we have to turn over.

17 So, the government's position is that we have  
18 nothing to give Mr. Ellis.

19 THE COURT: Stand up, Mr. Engel.

20 MR. ENGEL: Judge--

21 THE COURT: No, Mr. Engel.

22 MR. ENGEL: I am sorry, your Honor.

23 THE COURT: Let me suggest to you the possibility  
24 that Mr. Marchesi was a government informer during the investi-  
25 gation leading up to the indictment during which various



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2 and sundry memoranda, notes and so on and so forth were  
3 made.

4 Why should the cut-off date be the date of  
5 the indictment?

6 MR. ENGEL: Because if the communications to  
7 the government were before the time of the indictment in  
8 this case, there would be no spy in the camp rationale for the  
9 motion.

10 THE COURT: Supposing the memorandum said,  
11 "We are going to indict you, but eventually we will  
12 dismiss just so long as you keep on telling us what is  
13 going on"?

14 MR. ENGEL: That doesn't relate to a statement  
15 of Marchesi.

16 THE COURT: And Marchese says, "Yes," and at  
17 which point he adopts the entire thing.

18 MR. ENGEL: The people who would be available  
19 to testify tomorrow include the three Assistant United  
20 States Attorneys and the United States Attorney, and the  
21 agents who would be relevant, if any, and if there is  
22 such a statement, that would be hearsay and inadmissible  
23 under Rule 27(c), which is related solely to evidentiary  
24 material, and they can inquire if Marchesi says something  
25 like that of the assistants and of the agents, and then

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2 it would not be hearsay. It is not subject to subpoena.

3 THE COURT: All right, Mr. Ellis, let me hear  
4 from you.

5 By the way, I hope everybody has got the correct  
6 picture of what is going on tomorrow.

7 MR. ELLIS: We haven't heard anything except  
8 Pam's phone call that there would be a hearing.

9 THE COURT: All right. We are going to take  
10 it up piece by piece. Tomorrow, are going to find out--  
11 your claim is Marchese was basically a spy in the enemy  
12 camp; right?

13 MR. ELLIS: That is half of our claim.

14 THE COURT: I understand that. That is the  
15 piece we are going to take up tomorrow.

16 MR. ELLIS: We are not going to take up the elec-  
17 tronic surveillance aspect of it tomorrow?

18 THE COURT: No.

19 MR. ELLIS: Okay.

20 THE COURT: The reason I mention this to you  
21 is, I don't want you to be surprised and make you work  
22 all night doing some memoranda which I am not going to  
23 take a look at.

24 You will go back to your office and there will  
25 be a phone call that will make you work tonight, but go



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2 ahead.

3 MR. ELLIS: Couldn't you tell me now?

4 THE COURT: Not from me; I am not going to  
5 make it.

6 MR. ELLIS: Judge, I would suggest that it  
7 is entirely inappropriate to treat the subpoena on this  
8 hearing in the same manner that one would treat a Rule 16 motion  
9 in a criminal case where the ultimate issue to be determined  
10 is the guilt or innocence of the defendant.

11 The ultimate issue here is really just what  
12 might be in the file that we want produced in this court  
13 and examined.

14 It is hardly appropriate, I would say, to say  
15 that we can decide that issue on solely the basis of the  
16 oral testimony of some of the actors involved, but that  
17 nobody can get a look at that file because it is not  
18 admissible evidence.

19 The ultimate in admissible evidence is, if they are  
20 contemporaneous documents kept in the regular course of  
21 business coming from Marchese, directly or indirectly,  
22 and beyond that, Judge, they spend three months in proving a  
23 case by circumstantial evidence and they would limit us  
24 to direct hard evidence of the events without letting us  
25 get into the surrounding circumstances.

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2 I would suggest that we are at least entitled  
3 to see that those files exist.

4 THE COURT: Number one, who has got a copy of  
5 the subpoena?

6 MR. ENGEL: I have, your Honor.

7 THE COURT: Do you want it marked?

8 MR. ELLIS: Yes, Judge.

9 THE COURT: Sure, go ahead. Take the original  
10 back. This is a Xerox copy, is that true, Mr. Engel?

11 MR. ENGEL: That's right, your Honor.

12 THE COURT: Mark that as Court's Exhibit A.

13 MR. ENGEL: There are two subpoenas.

14 THE COURT: Mark them both.

15 MR. ENGEL: Here is one directed to Mr.

16 Fallon and one directed to Mr. Curran.

17 THE COURT: All right, A and B. The one addressed  
18 to Mr. Fallon is Court's Exhibit A. The one addressed to  
19 Mr. Curran is Court's Exhibit B.

20 (Court's Exhibits A and B marked for identifi-  
21 cation received in evidence.)

22 THE COURT: The government, I assume, intends  
23 tomorrow, to produce government witnesses; correct?

24 MR. ENGEL: Your Honor, the government's  
25 position with respect to the procedure in which the hearing



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2 should follow would be this:

3 That Mr. Ellis call Mr. Marchese and have him  
4 establish, if possible, that there were indeed defense  
5 secrets, which could be disclosed to the government, of which  
6 Mr. Marchese was privy or to which he was privy.

7 Secondly, that he establish, through Mr.  
8 Marchese, that those were in some manner communicated to  
9 the United States Attorney's Office or to an agent of the  
10 government, and that failing that, that we all go home.

11 THE COURT: (C) That is the easy way. I am sure,  
12 Mr. Ellis, you have Marchese in your left coat pocket; is  
13 that correct? Do you know where he is? (C) - (C)

14 MR. ENGEL: (C) He is in my office, your Honor,  
15 right now. 2

16 MR. ELLIS: Judge, I have spoken to Mr.  
17 Marchese twice since December--since October. I don't  
18 suggest that would be the appropriate procedure. He is  
19 not about to talk very freely, in any event.

20 THE COURT: I still say, Mr. Engel, all of  
21 your witnesses are going to be government employees or  
22 government figures; is that correct, the ones that you  
23 plan to call?

24 MR. ENGEL: The only exception might be Mr.  
25 Curley. He might be a witness.

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2 THE COURT: I couldn't see Mr. Curley disap-  
3 pearing.

4 MR. ENGEL: I didn't see him disappearing.  
5 In any event, the government has available, or will have  
6 available tomorrow, Messrs. Curran, Phillips, Fortuin,  
7 Engel, Agents Palatroni and Shutes, and Detective Spataro.

8 The government's suggestion would be that-if  
9 Mr. Marchese does suggest that there were communications  
10 or knowledge of defense secrets and then communications of  
11 them to the government, that the government witnesses would  
12 be available to rebut those statements inconsistent  
13 with Mr. Curran's affidavit submitted earlier.

14 THE COURT: This is non-jury. We might  
15 take it backwards.

16 Now, do you have a file of any such documents  
17 as called for in the subpoenas?

18 MR. ENGEL: Well, your Honor--

19 THE COURT: Are they located in one place?

20 MR. ENGEL: I have tried to get hold of what  
21 is commonly referred to as "the informant file," that is,  
22 there has been no question that Mr. Marchese was, at some  
23 point, an informant, and a file was kept on him.

24 I have not been successful in doing so although  
25 my nose tells me I'm hot on the track and I think I will



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be able to get them by tomorrow morning.

At any event, as--

THE COURT: Tomorrow morning, hopefully, you will not only have a hot nose but hot hands.

MR. ENGEL: Exactly. If I find something which--

THE COURT: No, you get the informant file. Find it.

MR. ENGEL: I will submit it to you in chambers.

THE COURT: All right. Is there anything else?

MR. ELLIS: Judge, I am just not entirely clear on where that leaves us, (a) with the specific mode of procedure for tomorrow, and (b) the Lopez aspect of that motion.

THE COURT: The Lopez aspect I will take up at some other time. I like to solve problems one at a time. That is about the only way I can do it.

MR. ELLIS: Who will lead off, your Honor, tomorrow, the government or us?

THE COURT: Mr. Phillips is now the special prosecutor down in Philadelphia. There is no reason to have him sit around all morning or all day.

MR. ELLIS: I agree.

THE COURT: Let's take him first, all right?

From there on, we will see where we are going.

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I also want that file tomorrow morning.

MR. ENGEL: Yes, sir.

THE COURT: Try and get it to me by about 9:15 or thereabouts. We will start tomorrow morning about 10:15.

There is one little matter that has to be cleaned up before that.

MR. ELLIS: Judge, for the record, I would like to look at that file, too.

MR. FORTUIN: We object to that most strenuously.

THE COURT: I didn't say he is getting it. He said he would like it. It is clear that he would like it. That is a different story.

All right, anything else?

MR. FORTUIN: Yes, could I just seek some guidance on the other aspect of this motion just in terms of formal matters?

With respect to the Lopez point, the wiretap on Mr. Lopez' telephone, this issue was raised in the proceeding against Vincent Papa before Judge Brieant, and affidavits were submitted there by all the assistants, which laid out the fact that our office had no exposure to these wiretaps.

Certainly, exposure we did have came after the



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2 verdict in this case.

3 Now, would your Honor like us to re-file  
4 similar affidavits in this case?

5 THE COURT: Mr. Ellis, have you seen them?

6 MR. ELLIS: I got them for the first time in  
7 this court and they speak about the personal knowledge  
8 of the particular assistants involved and not the knowledge  
9 of the office.

10 THE COURT: File them, but, as I said, I am  
11 not going to take up that part of the case tomorrow.

12 MR. FORTJIN: I understand that.

13 THE COURT: Sure, file them.

14 MR. FORTJIN: The original affidavits filed  
15 in that proceeding I can file with your Honor?

16 THE COURT: Make a Xerox copy just so long  
17 as I can read them. Anything else? 10:15 in the morning.

18 (Hearing adjourned.)  
19  
20  
21  
22  
23  
24  
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1 UNITED STATES DISTRICT COURT  
 2 SOUTHERN DISTRICT OF NEW YORK

3 -----X  
 4 UNITED STATES OF AMERICA :

5 vs. :

: 73 Cr. 1099

6 CARMINE TRAMUNTI, et al :  
 7 DONATO CHRISTIANO, a/k/a "FINNEGAN" :  
 8 ANGELO MAMONE, a/k/a "BUTCH" and :  
 JOHN SPRINGER, :

9 Defendants, :

10 -----X  
 11 BEFORE: HON. KEVIN THOMAS DUFFY,

District Judge

13 July 8, 1975

14 10:23 a. m.

15 APPEARANCES:

16 PAUL J. CURRAN, ESQ.,

United States Attorney for the Government

17 BY: Thomas E. Engel, and Thomas Fortuin, Esqs.,  
 Assistant United States Attorneys

18 IVAN FISCHER, ESQ.,

For Defendant Christiano

19 AMEN WEISMAN & BUTLER, ESQS.,

Attorneys for Defendant Mamone

20 BY: Robert L. Ellis, and Michael G. Shannon, Esqs. of counsel

21 MARTIN J. SIEGEL, ESQ.,

Attorney for Defendant Springer

22 HERBERT S. SIEGEL & GILBERT EPSTEIN, ESQS.,

Attorneys for Defendant Tramunti

23 FRANK A. LOPEZ, ESQ.,

Attorney for Defendants DiNapoli and Robinson

24 THEODORE ROSENBERG, ESQ.,

Attorney for Defendant Pugliese



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(Case called.)

THE COURT: Is the government ready?

MR. ENGEL: The government is ready, your Honor.

THE COURT: Defendants ready?

MR. ELLIS: Ready, your Honor.

MR. LOPEZ: May I make an application? Most respectfully, I see that all the attorneys for all the defendants, who should be involved in this action, are not present.

May I say, by way of explanation, that the original motion and application in this case was, of course, filed by Mr. Ellis in behalf of the defendant Mamone, and this is what we have considered the Marchese application.

I think I wrote your Honor a letter and sent a copy to the United States Attorney's Office to the effect that I was joining all as lead counsel, and continue in that capacity as lead counsel, I was joining all defendants in the Marchese application.

Some of counsel are not here. I, myself, personally am here for Joseph DiNapoli, and I have also received instructions from Mr. Lavin, who has requested that I also represent Warren Robinson for the purpose of this application.

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2 I spoke with Ivan Fischer last night, your  
3 Honor. He indicated that he would be here this morning  
4 and I think he is under the misapprehension that this  
5 hearing is scheduled for 10:45.

6 THE COURT: He is not under the misapprehension  
7 at all, Mr. Lopez. There is no misapprehension. The  
8 problem is the notice went out from my office noting this  
9 case for 10:45 this morning. It is not his fault that  
10 he is not here. It is mine.

11 I am willing to wait until 10:45. If other  
12 counsel show up, if everyone is here prior to that time,  
13 we will start then.

14 MR. LOPEZ: Fine. Judge Duffy, in the event  
15 that other counsel are not here for any of the other  
16 defendants, would your Honor then permit that I represent  
17 all other defendants that are unrepresented for the  
18 purpose of this hearing since all defendants, your Honor,  
19 to my knowledge, wish to join in the application?

20 THE COURT: Mr. Lopez, the easy answer is yes.

21 MR. LOPEZ: Yes, your Honor.

22 THE COURT: However, we do have that case  
23 from the Second Circuit which prohibits one counsel from  
24 representing more than one defendant in a criminal trial.

25 I don't know whether that applies to hearings



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2 also. I would like to hear from the government. I would  
3 like to hear from somebody as to what the rules are.

4 MR. ENGEL: The government doesn't take any  
5 position with respect to Mr. Lopez' application, but I  
6 would point out--

7 THE COURT: That's very helpful.

8 MR. ENGEL: I hope what I am about to say is  
9 helpful. That is, it seems to me that with respect to  
10 the thrust of--or what I take to be the thrust of Mr.  
11 Ellis' motion, it seems to me that all defendants stand  
12 in about the same shoes.

13 THE COURT: I would think so, yes.

14 MR. ENGEL: Therefore, I do not see any problem  
15 in terms of the conflict of Mr. Lopez representing the  
16 interest of absent defendants.

17 THE COURT: You are taking no position and,  
18 therefore, you are not objecting.

19 Mr. Rosenberg, are you objecting to it?

20 MR. ROSENBERG: No, your Honor. I was going  
21 to suggest if you were to wait until 10:45 maybe some of  
22 the other attorneys will show up and it may be academic  
23 at that time.

24 THE COURT: Mr. Ellis, do you object?

25 MR. ELLIS: I have no objection.

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2 Mr. H. SIEGEL: I have no objection.

3 MR. EPSTEIN: I don't think the Edwards case  
4 would be applicable to this, and I say this as the counsel  
5 who argued this before the Court of Appeals.

6 THE COURT: I remember it vaguely.

7 Gentlemen, in view of the fact that a notice  
8 went out from my office setting this down for 10:45, we  
9 will take a recess until 10:45. Perhaps counsel may be  
10 able to confer during that time.

11 (Recess.)

12 (In open court.)

13 THE COURT: Mr. Siegel, did you note your  
14 appearance?

15 MR. EPSTEIN: Yes, your Honor it is noted.

16 THE COURT: Mr. Curran, I was walking out to  
17 go back up to chambers and I spotted, in the waiting room,  
18 one of the former assistants, Mr. Phillips, who I understand  
19 is now a special prosecutor in Pennsylvania.

20 I commented to him that he looked well. I  
21 also commented to him about his tie, and I said that I assume  
22 that he had something else to do and, with the consent of  
23 all counsel, we would take him out of turn.

24 Is that agreeable with you?

25 MR. CURRAN: Yes, your Honor.



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2 THE COURT: Does anybody object to it?

3 MR. ELLIS: No objection. Your Honor, I have  
4 no objection, of course, to taking Mr. Phillips out of  
5 turn.

6 Before any witness takes the stand I would like,  
7 I would hope that the matter of our document production  
8 subpoena would be settled.

9 THE COURT: Yes. Mr. Engel?

10 MR. ENGEL: Your Honor--

11 THE COURT: How hot are your hands today?

12 MR. ENGEL: My hands are cold, your Honor,  
13 and I am afraid my bloodhound nose has gotten cold as well.  
14 I have used all efforts to get it here today and we haven't  
15 been able to locate it. And all I can tell you is that  
16 we will continue those efforts and when we find it, if  
17 we find it, I assume we will--

18 THE COURT: I assume you will.

19 MR. ENGEL: --we will present it for your  
20 inspection in camera.

21 THE COURT: Okay; fine.

22 MR. ELLIS: At this time I would respectfully  
23 move for a continuance. I don't see how we could possibly  
24 go forward without the documents. We already have every-  
25 body's general denial.

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2 THE COURT: Do you wish to be heard?

3 MR. ENGEL: Your Honor, the only thing that  
4 the government wishes to say is that the witnesses who  
5 are available today would presumably have knowledge of  
6 any of the matters which are alleged in Mr. Ellis' affidavits.

7 To the extent that there are pieces of paper  
8 somewhere, those will either confirm, I suppose, or deny  
9 the testimony or have nothing to do with the testimony  
10 that is presented here today.

11 In any event, the government is aware of its  
12 obligations with respect to these pieces of paper and will  
13 produce them when it finds them.

14 In the event, of course, that there is anything  
15 in the nature of Brady or anything of that sort, the government  
16 would, of course, bring that to the court's attention.

17 THE COURT: I will read them myself.

18 MR. ENGEL: Of course. There is no reason  
19 not to proceed today as long as all the witnesses are here  
20 and we can proceed later if something else turns up.

21 MR. ELLIS: Your Honor, I, most respectfully,  
22 disagree with Mr. Engel's suggestion.

23 The witnesses present recollections may be one thing  
24 but the key evidence from our point of view are the con-  
25 temporaneous notes and memoranda and records. We must



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have those contemporaneous records for the purpose of  
cross-examining these witnesses.

Mr. Curran's affidavit pretty much set forth  
what these people will say. I want to know whether their  
testimony will be borne out by their comments at the time,  
their written comments at the time.

THE COURT: Well, this is one of the peculiar  
situations which faces a judge on a day-to-day basis and  
we have to face up to questions of law and questions of  
practicality.

As a practical matter, Mr. Phillips is here  
from Pennsylvania. I believe that he has a most responsible  
job down in Pennsylvania. What is his title exactly,  
Mr. Curran?

MR. CURRAN: I believe, your Honor, he is  
Special State Prosecutor, I think, Special Assistant  
Attorney General.

THE COURT: Okay. I will be willing to take  
Mr. Phillips' direct testimony. You will be willing to  
cross-examine him, subject to his recall should that be  
necessary, after I read the documents, all right.

In other words, you can have two bites of the apple.

MR. ELLIS: Your Honor, I can understand the  
practicality of proceeding in that manner in the case of

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Phillips-direct

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2 Mr. Phillips, but I would hope that no other witness would  
3 take the stand until the documents are available.

4 THE COURT: Well, let's take Mr. Phillips first.

5 Mr. Engel, at this point the government calls  
6 Mr. Phillips; is that correct?

7 MR. ENGEL: That is correct.

8 THE COURT: Go out and get Mr. Phillips.

9 WALTER M. PHILLIPS, JR., called as a witness  
10 by the government, being first duly sworn, testified  
11 as follows:

12  
13 BY THE COURT:

14 Q Mr. Phillips, what is your present title?

15 A I am a Deputy Attorney General, more commonly  
16 known, however, as a Special Prosecutor in the Commonwealth  
17 of Pennsylvania.

18 Q At one time you were employed by the United  
19 States Attorney's Office for the Southern District of  
20 New York; is that correct, sir?

21 A Yes.

22 Q As such, what were the dates of your employment?

23 A From September 30, 1963 until March 29, 1974.

24 Q During that period was there a time when you  
25 were in charge of the so-called narcotics unit of the



1 eo mb Phillips-direct  
2 United States Attorney's Office.

3 A Yes.

4 Q What was the period that you were in charge  
5 of that unit, sir?

6 A From March 27, 1972 until I left on March 29,  
7 1974.

8 Q Sir, were you involved in the investigation and  
9 prosecution of a case commonly known as United States of  
10 America against Carmine Tramunti?

11 A Yes, sir, I was.

12 Q That investigation and prosecution resulted, or  
13 the investigation resulted in an indictment entitled  
14 73 Criminal 1099; is that correct, sir?

15 A Yes, sir.

16 Q You were part of the trial staff of the United  
17 States Attorney's Office during the trial of that case;  
18 is that correct?

19 A Yes, sir.

20 All right, Mr. Engel, now that we have got the  
21 preliminaries over with, let's go.

22 MR. ENGEL: Thank you, your Honor.

23 DIRECT EXAMINATION

24 BY MR. ENGEL:

25 Q In connection with the prosecution of Carmine

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2 Tramunti and others, Mr. Phillips, was there an indictment  
3 prior to 73 Cr. 1099 naming many of the defendants later  
4 named in 1099?

5 A Yes, there was.

6 Q When was that returned, if you recall?

7 A I believe it was October 3, 1973.

8 Q Pursuant to that indictment, were bench warrants  
9 issued for the arrest of several of the defendants in  
10 that case?

11 A Yes.

12 Q Was one of those defendants a person known as  
13 Joseph Marchese, also known as "Joe Cab"?

14 A Yes.

15 Q Now, directing your attention to that same day,  
16 October 3, 1973, did you have occasion to be in 26 Federal  
17 Plaza, across the street?

18 A That evening I was, yes.

19 Q Were you present during the interviews of the  
20 defendants who were arrested on that day?

21 A Some of them. Not all of them by any means.

22 Q Were you present at the interview of Joseph  
23 Marchese?

24 A Only during a part of it.

25 Q Who conducted that interview?



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Phillips-direct

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2 A I think it was primarily conducted by an  
3 Assistant United States Attorney named Mel Barkin.

4 Q Do you recall your conversation with Mr.  
5 Marchese, if any, at that time?

6 A Yes, I have some recollection of my conversation  
7 with Mr. Marchesi at that time.

8 Q Could you tell us, please, what you said to  
9 him and what he said to you, if you recall?

10 A Well, about the only thing that I can independently  
11 recall is discussing with him the possibility of his  
12 cooperating with the government in that particular case  
13 and testifying at the trial.

14 THE COURT: That is only one side of the  
15 conversation, Mr. Phillips. What did he say to you?

16 THE WITNESS: My recollection, again, which is  
17 just general, is that he indicated that he was innocent  
18 of the charges and could in no way cooperate with the  
19 government.

20 BY MR. ENGEL:

21 Q Now, did you have occasion, Mr. Phillips, to  
22 interview Mr. Marchese again?

23 A I believe so and I have a vaguer recollection  
24 of doing that, but I believe that a subsequent time I  
25 did see him and not interview him, but had a conversation

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Phillips-direct

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2 with him.

3 Q Where did that take place?

4 A I believe it was in my office in this building.

5 Q Do you recall who was present besides yourself  
6 and Mr. Marchese?

7 A I do not recall, but at least one, if not  
8 more than one agent was present.

9 Q Do you recall the name of any agent that was  
10 present?

11 A No, but I believe it was probably Torre Shutes.

12 Q Was Mike Spataro present, if you recall?

13 A I don't recall.

14 Q Could you tell us, please, on this occasion,  
15 can you place this in any time frame?

16 A Well, it was sometime after Marchese had been  
17 arrested and I believe it was within the next few days or  
18 so.

19 Q Tell us, please, what was said by you and by  
20 him or by anybody else on that occasion in your office.

21 A I don't recollect other than a general impression  
22 I have of discussing the same thing.

23 MR. ELLIS: Object to the "general impression,"  
24 Judge, if he doesn't recollect.

25 THE COURT: He doesn't recollect, he doesn't



1 co mb Phillips-direct

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2 recollect, all right.

3 Q Do you recall discussing whether the defendant  
4 Marchese would cooperate and testify on that occasion?

5 A Yes, I do recollect that we discussed that.

6 Q Do you recall his reaction to that discussion?

7 A It was the same reaction that he had the first--

8 THE COURT: No.

9 A (Continued) He said--

10 THE COURT: Yes, or no.

11 THE WITNESS: He said no.

12 THE COURT: Okay.

13 Q Did you discuss the witness protection program  
14 with him at that time?

15 A I may have, but I don't recall.

16 Q Did Marchese tell you, at that time, that he  
17 did not wish to cooperate or did he say that he would  
18 communicate later to you?

19 A I believe he said that he did not wish to  
20 cooperate, but I am not absolutely certain about that.

21 Q Now, after that conversation in your office,  
22 did you have any further conversations with Mr. Marchese  
23 anywhere between that date and the date of March 13, 1974?

24 A Not that I can recall.

25 THE COURT: For purposes of the record,

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Phillips-direct

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2 March 13, 1974 is the date that the jury returned a verdict  
3 on 73 Criminal 1099.

4 Q Now, Mr. Phillips, one further question: did  
5 you have any conversations with anybody else between the  
6 period just indicated, in that period, with respect to  
7 communications from Marchese which were directed towards  
8 you or other members of the United States Attorney's  
9 Office?

10 MR. ELLIS: I object.

11 THE COURT: I am not totally sure I understand  
12 the question, Mr. Engel. Let's break it down a little  
13 bit.

14 Mr. Phillips, did you have any conversations  
15 with other Assistant U. S. Attorneys who related to you  
16 statements made to them by Mr. Marchese?

17 THE WITNESS: No.

18 THE COURT: Did you have any conversations  
19 with any agent of any federal agency concerning statements  
20 made to them by Mr. Marchese which were to be related to  
21 you?

22 THE WITNESS: No.

23 BY MR. ENGEL:

24 Q Did you receive any message whatsoever from  
25 Mr. Marchese through any person?



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Phillips-direct

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2 A I don't know what you mean by "message."

3 Q Any message from him to you related by somebody  
4 else.

5 A No.

6 MR. ENGEL: No further questions.

7 THE COURT: Mr. Ellis, I think there is a  
8 little problem. The prior indictment which was 73 Criminal--  
9 what is the number of it?

10 MR. ENGEL: Your Honor, if my recollection  
11 serves me, I think it was 926.

12 MR. H. SIEGEL: I think it was 931. Mr. Marchese  
13 was arraigned before a magistrate in connection with  
14 that; is that correct, sir?

15 THE WITNESS: Yes, sir.

16 THE COURT: Did you handle the arraignment?

17 THE WITNESS: I believe that Mr. Curran and  
18 I both handled the arraignment, and I don't recall if I  
19 handled Mr. Marchese's or whether Mr. Curran did or  
20 whether another assistant did.

21 THE COURT: But you were both there at that  
22 time?

23 THE WITNESS: I believe so.

24 THE COURT: Did you have any conversation  
25 with Mr. Marchese at the time of his arraignment?

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Phillips-direct/cross

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2 THE WITNESS: No.

3 THE COURT: All right.

4 I just wanted to make sure. Go ahead, Mr.

5 Ellis.

6 MR. ELLIS: Thank you.

7 CROSS-EXAMINATION

8 BY MR. ELLIS:

9 Q Mr. Phillips, when did you first become--

10 THE COURT: Hold on a second. The record  
11 should reflect that Mr. Ivan Fischer, although late,  
12 did show.

13 MR. FISCHER: Thank you, your Honor.

14 THE COURT: All right. Go ahead, Mr. Ellis.

15 Q When did you first become associated, in any  
16 capacity, with the Tramunti case?

17 MR. ENGEL: Objection as leading.

18 THE COURT: Let me break it down.

19 BY THE COURT:

20 Q Mr. Phillips, as a member of the narcotic  
21 unit of the United States Attorney's Office, you had a  
22 continuing investigation into narcotics; is that correct?

23 A Yes.

24 Q When is the first time, in connection with your  
25 continuing investigation, that you came across any of the



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Phillips-cross

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names involved in 74 Criminal 1099, there being 32 names?

MR. ELLIS: 33, I believe, Judge.

THE COURT: 33 names.

A That would have been in April of 1973.

Q Do you want to take a look at it?

A No, I understand. You see, the indictment 73, Cr. 1099 superseded, in turn superseded another indictment that had two defendants named Inglese and Delvecchio. That indictment had been returned in April of 1973 and sometime prior to that was when I first had any contact with that particular case. Although I was not immediately in charge of it, I assigned somebody else to be.

THE COURT: Go ahead.

BY MR. ELLIS:

Q Did there come a time when you were immediately in charge of the so-called Tramunti case?

A Yes.

Q When was that, sir?

A Well, I don't really know exactly when I officially became in charge of the Tramunti case.

Q When did you de facto become in charge of the Tramunti case?

A Some time in the summer of 1973.

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Phillips-cross

19

Q Who were your predecessors on this case?

A Mr. Sabetta; John Sabetta had the case when it just had two defendants.

Q Was there a Mr. Feffer that had any connection with this prosecution?

A Well, he did to some extent back in January, February, March of 1973, but he was in charge of the overall investigation that went much further than this case.

Q Would you describe Mr. Feffer's role in the investigation and prosecution of this case?

MR. ENGEL: Objection, your Honor.

MR. ELLIS: Judge, if I may be heard?

THE COURT: Sure, go ahead.

MR. ELLIS: Mr. Feffer is one of the persons who, we will show, looked at the Lopez wiretaps in the office of Nadjari.

MR. ENGEL: That's not the purpose of this hearing, your Honor.

MR. ELLIS: There is one motion, Judge--

THE COURT: Let's get it over and done with. All right, I will permit it. Go ahead and answer.

What was the first connection with this particular case?

THE WITNESS: Mr. Feffer was assigned by me



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Phillips-cross

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as the United States Attorney's Office representative in a joint investigation that involved federal and state agencies and he was assigned in the fall of 1972. And this investigation culminated in April of 1973 with a series of indictments. One of the indictments named two individuals, Inglese and Delvecchio.

Mr. Feffer, at some point in time during his assignment, became familiar with aspects of that case. Sometime in late March or early April he presented to me a breakdown of the indictments and cases that ultimately resulted in the indictments in the middle of April. And one of them was this case.

BY MR. ELLIS:

Q Mr. Phillips, during the period of time when you were the head of the narcotics division, did you maintain a diary or an appointment book?

A No, I had a calendar on my desk, but I did not have a diary or an appointment book.

Q Did you note your appointments upon that calendar?

A Yes, generally.

Q Where is that calendar today, if you know?

A It is in my desk in Philadelphia.

Q When did you last examine that calendar?

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P' llips-cross

21

2 A Well, I think I examined a very small portion  
3 of it several months ago before coming here to testify in  
4 another case.

5 Q You say "a very small portion of it"?

6 A One date in June of 1973.

7 Q You didn't examine it for purposes of your  
8 testimony today, did you?

9 A No.

10 Q As head of the narcotics division of the U. S.  
11 Attorney's Office for the district, were you familiar with  
12 the record-keeping procedures of that office?

13 A Yes.

14 Q Did the narcotics division or the U. S. Attorney's  
15 Office maintain what is known as an informant's file?

16 A No.

17 Q Do you know whether there was any file relating  
18 to Joseph Marchese in any capacity?

19 MR. ENGEL: May we have a location about  
20 Mr. Marchese's supposed file?

21 MR. ELLIS: Let's find out if it existed first.

22 MR. ENGEL: HEW, Social Security, what are we  
23 talking about?

24 THE COURT: We are not interested in that, I  
25 am sure. Was there an informant's file kept by any law



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Phillips-cross

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enforcement agency of the United States Government in connection with Joseph Marchese, also known as "Joe Cab"? Is that the question you wanted to ask?

MR. ELLIS: That will do.

THE COURT: That will do, okay.

THE WITNESS: I don't know.

Q You never saw such a file?

A No.

Q "Joe Cab," do you know how Mr. Marchese got that nickname?

A I believe I was informed that he got the nickname because he owned or had something to do with a cab company in the Bronx.

Q Do you know the name of that cab company?

A No, I don't.

Q Would it refresh your recollection if I told you it was the Shamrock Cab Company?

MR. ENGEL: Objection, your Honor.

THE COURT: Let him see whether it refreshes his recollection. Go ahead. The Shamrock, does that mean anything to you?

THE WITNESS: That does not refresh my recollection.

Q Was the investigation culminating in the Tramunti indictments ever known as the Shamrock investigation?

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Phillips-cross

23

MR. ENGEL: Objection.

THE COURT: Go ahead, what is it?

A Yes, it was known to the agents, I think the SIU, which was the representative of the police department that was involved in the investigation dubbed it that nickname.

Q Do you know of the names of the agents that referred to this case as the Shamrock case?

A I think Sergeant O'Boyle did and I think Captain Laperch did, and others.

Q Mr. Phillips, would you tell me when the first interview of Marchese was, at least the first that you participated in?

A The night that he was arrested which I believe was October 3rd.

Q 1973?

A Yes.

Q Did you make any notes of that interview?

A No, I did not make any notes.

Q Was anybody in the room making notes?

A Yes.

Q Who was?

A I believe Assistant United States Attorney Mel Barkin was making notes. I am not certain whether the



notes he made were before I had the conversation with Marchese, during it or both.

Q How long were you present at that interview?

A Not very long.

Q Can you fix a time, Mr. Phillips?

A Maybe 10 minutes.

Q Do you know how long the interview continued?

A No, I do not.

Q Did you ever see the notes made by Mr. Barkin?

A I believe so.

Q Do you know?

A I don't know for certain whether I have seen them, but I think I have seen them.

Q Did you ever receive a report from Mr. Barkin of his interview with Marchese?

THE COURT: You mean written or oral?

MR. ELLIS: Pardon me?

THE COURT: You mean written or oral?

MR. ELLIS: I would like to start with the general first, Judge, and we will find out whether they were written or oral.

A No. Independent of the pre-arraignment interview sheet, I did not receive any such report.

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Phillips-cross

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2 Q Is it your testimony then that the only written  
3 account, if I may call it that, of the Marchese interview  
4 was the pre-arraignment interview sheet?

5 A Yes, I believe so.

6 Q Do you know what became of that sheet, where it  
7 was placed physically?

8 A You mean immediately after the interview?

9 THE COURT: All right, start with that.

10 A I believe it was placed in a file that was  
11 marked Marchese, Joseph Marchese.

12 THE COURT: All right, after that was there a  
13 copy made of it?

14 THE WITNESS: I don't know. I don't know. I  
15 believe there was, but I am not certain.

16 MR. ENGEL: Your Honor, could I inquire as  
17 to what the thrust of Mr. Ellis' inquiry is with respect  
18 to that pre-arraignment sheet?

19 THE COURT: I think it is preliminary to some-  
20 thing else, but I will permit it to go on. Let's see  
21 what is going on. I can guess about three different  
22 areas.

23 MR. ENGEL: For the record, it is sitting on  
24 the desk in front of me.

25 THE COURT: What is?



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Phillips-cross

26

2 MR. ENGEL: The pre-arraignment sheet is  
3 sitting right here, at least what I take to be the pre-  
4 arraignment sheet.

5 THE COURT: Show it to Mr. Phillips. Is  
6 that the pre-arraignment sheet, sir?

7 MR. ENGEL: Mark it as Government's Exhibit 1,  
8 I suppose.

9 (Government's Exhibit 1 marked for identification.)

10 THE COURT: Go ahead and show it to him. Come  
11 on.

12 MR. ELLIS: Let me take a look at it, if I  
13 may.

14 MR. ENGEL: Is this the pre-arraignment  
15 interview sheet of Marchese of October 3, '73?

16 THE WITNESS: Yes.

17 THE COURT: That's Government's Exhibit 1  
18 which refers to the word "this".

19 MR. ENGEL: It is the government's position  
20 that this is not subject to discovery or subpoena by Mr.  
21 Ellis although, of course, he asked for it. 3500 does not  
22 apply to hearings. I am not going to turn it over.

23 THE COURT: Mr. Phillips, Mr. Marchese was  
24 represented by Mr. Curley in connection with this indictment;  
25 is that correct?

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Phillips-cross

27

2 THE WITNESS: Yes.

3 THE COURT: Did you turn over the pre-arraignment  
4 sheet to him?

5 THE WITNESS: I am sure I did. I don't have  
6 a specific recollection of it right now, but I am sure I  
7 did.

8 THE COURT: Let me see that. Is it your  
9 position that you are not going to turn it over?

10 MR. ENGEL: Your Honor, it is our position  
11 that we are not required to, and absent something of  
12 materiality or relevance, I don't think there is any  
13 reason to.

14 THE COURT: Where is Mr. Curley, pray tell?  
15 I will take 5 minutes and read this thing.

16 (Recess.)

17 (In open court.)

18 THE COURT: Mr. Engel, you persist in your  
19 objection?

20 MR. ENGEL: Yes, your Honor.

21 THE COURT: Mr. Phillips, you are under direct  
22 orders of this court to present yourself whenever this  
23 hearing is continued. Unfortunately, it will cause you  
24 to act like a yo-yo between here and Philadelphia to  
25 identify every document to which is appended your signature.



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Phillips-cross

28

2 This is your signature on Government's Exhibit 1; is that  
3 correct? A

4 THE WITNESS: Yes, it is.

5 THE COURT: All right. The hearing is  
6 adjourned until such time as the government produces the  
7 informant's file.

8 MR. ELLIS: Thank you.

9 (Hearing adjourned.)

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**Answering Affidavit of Thomas E. Engel  
in Opposition to Motion**

TEE:nb  
73-3168  
n-549

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,	:	
- v -	:	<u>AFFIDAVIT</u>
CARMINE TRAMUNTI, et al.,	:	73 Cr. 1099 (KTD)
Defendants.	:	

-----x

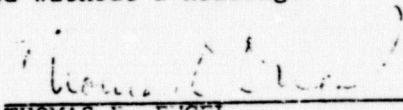
THOMAS E. ENGEL, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and was one of the four trial attorneys for the Government in the above captioned matter.

2. I submit this affidavit in opposition to affidavits submitted on behalf of defendant Angelo Mamone's motion for a new trial.

3. I was sworn in as an Assistant United States Attorney on November 28, 1973. Between November 28, 1973 and March 13, 1974, the date of the verdict in this case, I had no communication with Joseph Marchese other than an occasional exchange of greetings. At no time during this period did anyone relate to me any conversations they had had with Marchese, nor did I receive any message whatsoever from him, directly or indirectly.

WHEREFORE, it respectfully requested that the motion by Mamone be denied without a hearing.

  
THOMAS E. ENGEL  
Assistant United States Attorney

Sworn to before me this

23<sup>rd</sup> day of July, 1975

Gloria Calabrese  
Notary Public, State of New York  
No. 21003341  
Qualified in Kings County  
Commission Expires March 30, 1977



**Answering Affidavit of Thomas M. Fortuin  
in Opposition to Motion**

TMF:mb  
73-3168  
n-549

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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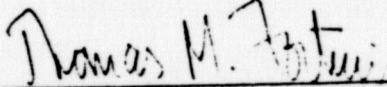
UNITED STATES OF AMERICA,	:	
- v -	:	<u>AFFIDAVIT</u>
CARMINE TRAMUNTI, et al.,	:	73 Cr. 1099 (KTD)
Defendants.	:	

----- -x

THOMAS M. FORTUIN, being duly sworn, deposes and says:

1. I am an Assistant United States Attorney in the office of Paul J. Curran, United States Attorney for the Southern District of New York and was one of the four trial attorneys for the Government in the above-captioned matter.
2. I submit this affidavit in opposition to affidavits submitted on behalf of defendant Angelo Mamone's motion for a new trial.
3. I was sworn in as an Assistant United States Attorney on October 8, 1973. Between October 8, 1973 and March 13, 1974, the date of the verdict in this case, I had no communication with Joseph Marchese other than an occasional exchange of greetings. At no time during this period did anyone relate to me any conversations they had had with Marchese, nor did I receive any message whatsoever from him, directly or indirectly.

WHEREFORE, it respectfully requested that the motion by Mamone be denied without a hearing.

  
\_\_\_\_\_  
THOMAS M. FORTUIN  
Assistant United States Attorney

Sworn to before me this

22<sup>nd</sup> day of July, 1975

Gloria Calabrese  
Notary Public, State of New York  
No. 2465530  
Qualified in Kings County  
Commission Expires March 30, 1977

**Affidavit of Robert L. Ellis in Opposition to  
Government's Motion to Terminate Hearings**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA

-against-

CARMINE TRAMUNTI, ANGELO  
MAMONE, et al.,

Defendants.

AFFIDAVIT IN  
OPPOSITION

73 Cr. 1099

(KTD)

-----x

STATE OF NEW YORK     )  
COUNTY OF NEW YORK   ) SS.:

Robert L. Ellis, being duly sworn, deposes and says:

I am the attorney for defendant Angelo Mamone. I submit this affidavit in opposition to the government's "motion" to terminate hearings on Mamone's application for a new trial.\*

The government's application essentially seeks re-argument or reconsideration of an issue heretofore decided against them; i.e., Mamone's right to a hearing, without making the fundamental showing of any issue of fact or rule of law

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\* We were not served with formal motion papers. We did receive a memorandum of law and a copy of an affidavit of Thomas M. Portuin sworn to July 24, 1975.



*Affidavit of Robert L. Ellis in Opposition to  
Government's Motion to Terminate Hearings*

which the Court overlooked or misapprehended. The fact that the present application merely repeats the same argument advanced by Mr. Curran in his affidavit of November 17, 1974, standing alone, should require its denial.

The government suggests that we rely only on conclusions and hearsay in our quest for a full and open investigation of Marchese's activities. But, they overlook the hard tangible evidence that immediately before and immediately after the instant trial Marchese was cooperating with the government; that there is a statement written in his own hand describing some of his informant activities; that the agents to whom he reported - Mr. Pallatrone, et al. - were the same agents who arrested DiNapoli and Papa and who rendered such critical testimony at bar. Significantly, to this day, although the government has denied that its attorneys received information from Marchese during the trial, its denial has never extended to the narcotics agents for whom Marchese worked and who testified in California that even after the Tramunti trial there were open charges against Marchese which could be used as leverage to procure his cooperation.

It is respectfully submitted that the government's application raises more questions than it answers. For example, what is "the connection" between information supplied by Marchese and the arrest of DiNapoli and Papa? (Memorandum, p. 3.)

*Affidavit of Robert L. Ellis in Opposition to  
Government's Motion to Terminate Hearings*

Doesn't the government know that Mr. Phillips told Marchese more than that he could not testify in California while on trial here? That according to Mr. Carly, Marchese's attorney, he was told not to allow Marchese to testify because Marchese "would be blown out of the water" for having given false information to the government. We wonder whether Mr. Phillips did anything to influence any other defendant against testifying.

We are chided for not producing an affidavit from Marchese. The short answer to this is the Court's sardonic observation that:

"I am sure, Mr. Ellis, you have Marchese in your left coat pocket; is that correct? Do you know where he is?"

and Mr. Engel's response:

"He is in my office, your Honor, right now." (Tr. 7/7/75, p. 8.)

It is ironic that the government's application comes when it does. The Court previously determined on the basis of information contained in our motion papers, that we would be entitled to "two bites of the apple", the second bite presumably being at Marchese's informant file (Tr. 7/8/75, p. 8). That file has now been produced, as have other documents which may shed light on Marchese's informant status during trial.

Although we have not yet been permitted to inspect the "Marchese

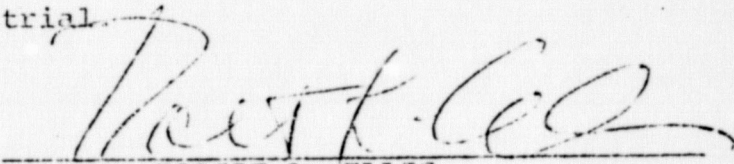


*Affidavit of Robert L. Ellis in Opposition to  
Government's Motion to Terminate Hearings*

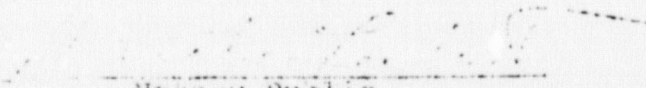
file", it is at least arguable that its contents do not support the government's present position since the government continues to rest on its general denial and does not even mention the best evidence, the actual record of information supplied by Marchese.

The hearing of July 8th was suspended until the informant file could be produced (Tr. 7/8, pp. 27-8). That file has now been produced. It is respectfully submitted that in the interest of truth and fairness, we should be afforded an opportunity to question the agents for whom Marchese worked and to examine Marchese's informant file to ascertain what information about this case the government may have received from him upon a full and public hearing. Only then will the cloud hanging over this case be dispelled once and for all.

One final point, we do not charge that there was a prosecution conspiracy to spy on the defense. We don't know whether such conspiracy existed for such information necessarily is in the possession of the other side. Our position simply is that the undeniable evidence of Marchese's informer role before and after this trial requires full disclosure and not suppression of his activities during the trial.

  
ROBERT L. ELLIS

Sworn to before me this  
23rd day of September, 1975.

  
Notary Public

**Opinion and Order Appealed From**  
**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**  
**73 Cr. 1099**

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UNITED STATES OF AMERICA,

—against—

CARMINE TRAMUNTI, et al.,

*Defendants.*

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KEVIN THOMAS DUFFY, D.J.

Following an eight week trial, fifteen defendants were convicted of conspiracy to violate the federal narcotics laws. Several defendants were also convicted of a number of related substantive offenses. The convictions of all but two were affirmed on appeal, 513 F.2d 1087 (2d Cir.), *cert. denied*, 423 U.S. 832 (1975). One of the defendants, Angelo Mamone, has moved for a new trial under Rule 33, Fed.R. Crim. Pro. on the ground of newly discovered evidence. The motion will be considered as having been made on behalf of all defendants.

It is the defendants' contention that in the course of the trial there were unlawful intrusions by the government upon their fifth and sixth amendment rights. Specifically, they allege that one of the defendants, Joseph Marchese, acted as a government informant during the trial thus encroaching upon privileged communications between the defendants and their attorneys.



*Opinion and Order Appealed From*

A hearing was convened by this Court to consider these allegations. The hearing was adjourned in its second day so that the government could submit its confidential informant's file to Marchese for an *in camera* inspection. It is the government's position that there is no need for a further hearing on this motion.

In considering whether the defendants have presented the minimum showing which would warrant an evidentiary hearing, the basis for the motion must be reviewed. Prior to submitting the *Tramunti* case to the jury, counsel for defendant Marchese moved for a judgment of acquittal. The government voiced strong opposition to the motion. Based solely on an analysis of the evidence produced against Marchese, I directed the entry of a judgment of acquittal as to him.

The defense now claims that based on Marchese's participation as a government informant in the case of *United States v. Willie Lee Knight* (Index No. 10068-R-CD) in the United States District Court for the Central District of California, there is an inference that he was an informer during the *Tramunti* trial. Marchese apparently acted as a government informer as to a drug sale to Knight in September 1971. Following the trial of the *Tramunti* case, Marchese was to have testified in the case against Knight. At the last minute, the parties agreed to stipulate to Marchese's testimony. It is also alleged that Marchese has provided information as to drug dealers not named in either the *Knight* or *Tramunti* indictments.

The defense has also suggested that the identity of names between Marchese's employer, Shamrock Cab Co., and the code name given to the *Tramunti* investigation, "Sham-

*Opinion and Order Appealed From*

rock," raises the inference of cooperation with the government.

In response to the motion the government has submitted affidavits from the then United States Attorney for this District, Paul J. Curran, who personally tried the case, as well as from Assistant United States Attorneys Thomas M. Fortuin and Thomas E. Engel. Each of them has sworn that at no time has Marchese cooperated with the government in connection with this case and that at no time during the trial did they receive any information from Marchese or from any other source regarding defense strategies or conversations between defendants and their attorneys. The one other Assistant United States Attorney who participated in the presentation of the case, Walter M. Phillips, Jr., is no longer with that office. He testified at the hearing on this issue that Marchese never agreed to cooperate and that he, Phillips, never received or conveyed messages from Marchese during the trial.

I have now had the opportunity to review the government's confidential informants file and there is nothing contained therein which would remotely suggest that Marchese acted as an informant in this case.

As to the "Shamrock" matter, assuming that the one name inspired the other, which is by no means clear, it would not necessarily indicate that a possible subject of the investigation was cooperating with the government. Furthermore, the government has claimed that the name of the cab company was "Gigi" not "Shamrock."

Examining the law in this Circuit, it appears that the defense must make some showing first, that the alleged "spy-defendant" was a confidential informant; second, that the informant was used by the government to intrude upon



*Opinion and Order Appealed From*

the attorney-client relationship; and, third, that the intrusion prejudiced the other defendants in some way. *United States v. Arroyo*, 494 F.2d 1316 (2d Cir.) *cert. denied*, 419 U.S. 827 (1974); *United States v. Rosner*, 485 F.2d 1213 (2d Cir. 1973), *cert. denied*, 416 U.S. 938 (1974); *United States v. Mosca*, 475 F.2d 1052, 1061-62 (2d Cir.) *cert. denied* 412 U.S. 948 (1973). The Circuit has rejected an approach of *per se* reversal unless there is some evidence that the government knowingly planted the informant with the intention of learning defense strategy. *United States v. Rosner*, *supra*, at 1223-29.

It would, perhaps, be unreasonable for this Court to require submission of extensive proof on each and every element of the defense claims before granting an evidentiary hearing. The purpose of a hearing is to give the parties an opportunity to develop such proof. But here virtually nothing has been produced which would warrant a further evidentiary hearing. The defense candidly admits that "we have no knowledge that Marchese actually transmitted defense information to the government." (Ellis Affidavit at par. 10). Although not dispositive of the matter, one defense attorney has acknowledged questioning Marchese as to his possible role as an informant and he has denied giving any assistance to the government.

The denial of a hearing on the Marchese question is without prejudice to a renewal of the defendant's application should a proper minimum showing be made.

The motion is denied.

So ORDERED.

KEVIN THOMAS DUFFY  
U.S.D.J.

Dated: New York, New York  
May 28, 1976.

## Stipulation Pursuant to FRAP 11(f)

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

Docket No. 73 Cr. 1099 (KTD)

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DOCKETED	7/2/76
NOV 11 1976	
IN DIARY	

ANGELO MAMONE,

Defendant-Appellant.  
----- x

It is hereby stipulated and agreed by and between the undersigned that the following documents shall constitute the record on appeal from an order entered herein in the U.S. District Court for the Southern District of New York on May 28, 1976:

- ~~ADD AFFIDAVIT~~
- 1) notice of motion, dated October 31, 1974.
  - 2) affidavit of Robert L. Ellis sworn to November 19, 1974.
  - 3) affidavit of Paul J. Curran sworn to November 27, 1974.
  - 4) affidavit of Robert L. Ellis sworn to January 30, 1975.
  - 5) transcripts of District Court proceedings dated July 7 and 8, 1975.
  - 6) affidavit of Thomas Engel sworn to July 23, 1975.
  - 7) affidavit of Thomas Fortuin dated July 24, 1975.
  - 8) sealed affidavit of Paul J. Curran sworn to August 21, 1975, together with exhibits transmitted therewith.
  - 9) Government's sealed memorandum of law accompanying the affidavit of Paul J. Curran sworn to August 21, 1975 (item 8).
  - 10) Government's memorandum of law dated September 8, 1975.
  - 11) affidavit of Robert L. Ellis sworn to September 23, 1975.
  - 12) opinion and order of District Court dated May 28, 1976.

Dated: July 1, 1976

ROBERT B. FISKE, JR.  
U.S. Attorney for the  
Southern District of New York  
Attorney for Appellee

By:

*Thomas E. Engel*  
Thomas E. Engel  
Assistant U.S. Attorney

*Robert L. Ellis*  
ROBERT L. ELLIS  
Attorney for Defendant-  
Appellant Angelo Mamone



## Clerk's Certificate

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

OFFICE COPY		
	BY MAIL	BY HAND
SERVED		
RECEIVED		
FILED IN COURT	7/1/76	
DOCKETED	7/2/76	
ENTERED IN DIARY		

U.S.A. - V - ANGELO MANOPE

CASE NO. 73cr1089  
JUDGE DeLoe  
CLERK'S CERTIFICATE.

I, RAYMOND F. BURGHARDT, Clerk of the District Court of the United States for the Southern District of New York, do hereby certify that the certified copy of docket entries lettered A- X, and the original filed papers numbered 1 thru 13, and exhibits \_\_\_\_\_, inclusive, constitute the record on appeal in the above entitled proceeding; except for the following missing documents:  
\* PARTIAL RECORD PURSUANT TO 11(F) FRAP  
DATE FILED PROCEEDINGS

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 1ST day of July, in the year of our Lord, One thousand nine hundred and seventy SIX, and of the Independence of the United States the 200TH year.

Raymond F. Burghardt  
Clerk of the Court

## Index to Record on Appeal

United States Court of Appeals  
for the Second Circuit

UNITED STATES OF AMERICA,  
Plaintiff Appellee,

v

ANGELO MAMONE,  
Defendant Appellant

United States Court  
Southern District of  
New York

Case No. 73 Cr. 1099 (FTD)

Judge Duffy

\* PARTIAL RECORD PURSUANT TO 11(F) FRAP

Index to the Record on Appeal

Documents

Certified copy of the docket sheet

A-~~1~~

AND AFFIDAVIT  
Notice of motions dated October 31, 1974

1

Affidavit of Robert L. Ellis sworn to  
November 19, 1974

2

Affidavit of Paul J. Corran sworn to  
November 27, 1974

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Affidavit of Robert L. Ellis sworn to  
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4

Transcripts of District Court proceedings  
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5

Affidavit of Thomas Engel sworn to  
July 23, 1975

6

Affidavit of Thomas Fortuin sworn to  
July 24, 1975

7

Government's memorandum of law filed  
September 11, 1975

8

Affidavit of Robert L. Ellis sworn to  
September 23, 1975

9

Opinion and Order of District Court  
dated May 28, 1976

10

Notice of Appeal dated June 4, 1976

11

Stipulation dated July 1, 1976

12

Clerk's Certificate

13